RECENT DECISIONS

ASSAULT AND BATTERY—EJECTION OF CUSTOMER FROM SHOP.—Respondent, being dissatisfied with a fish which she had ordered of appellant, telephoned the appellant's shop to this effect, and was told to return the fish and receive back her money, but that her trade was no longer desired. When she returned the fish, the manager of the shop refunded her the money she had paid, and told her to go away and stay away. Upon her continued refusal to leave, the manager took hold of her by the arm and forcibly ejected her from the shop. She brought action for assault and battery. *Held,* that the action should be dismissed. *Crouch* v. *Ringer* (Wash.), 188 Pac. 782.

One has no right to go upon the premises of another after the owner has forbidden him to do so. Also, a person has the right to complete control over his business place, and he may admit thereto and reject therefrom whom he pleases. *Morgan* v. *Durfee,* 69 Mo. 469, 33 Am. Rep. 508; *Woodman* v. *Howell,* 45 Ill. 367, 92 Am. Dec. 221. And he may select such persons as he chooses to deal with, although there be an implied license to the public to enter his shop or mercantile house for the purpose of transacting business. *Bogert* v. *Haight,* 20 Barb. (N. Y.) 251; *Breitenbach* v. *Trowbridge,* 64 Mich. 393, 31 N. W. 402, 8 Am. St. Rep. 829; *Woodman* v. *Howell, supra.*

Although the owner of premises has granted another license to enter thereon, if such license is not coupled with an interest, it may be revoked at the pleasure of the owner. *Breitenbach* v. *Trowbridge, supra; Woodman* v. *Howell, supra.* And if the owner request such other to leave, he may, after allowing him a reasonable time to depart, forcibly eject him, using only so much force as is necessary for the ejection. *Tipswood* v. *Potter* (Idaho), 174 Pac. 133; *McDermott* v. *Kennedy,* 1 Har. (Del.) 143; and authorities above cited.

In the principal case, the respondent entered upon the premises of the appellant by his permission, but such permission was restricted merely to her returning the fish and receiving her money. He had warned her that he no longer cared for her business; and, when ordered to leave the premises, she refused to do so until forcibly ejected by the appellant. The decision is undoubtedly sound.

The above discussion has no application to the rights and duties of common carriers.

BILLS AND NOTES—FORGERY—MISTAKE OF FACT.—An acting quartermaster in the United States Army had authority to draw drafts on the United States Treasury. His finance clerk drew a forged draft in his name, and endorsed the same to the defendant bank. The defendant bank presented the forged draft to the plaintiff, who accepted and paid it. Upon learning of the forgery, the plaintiff sued to recover the amount paid on the ground of a mistake of fact. *Held,* plaintiff cannot recover. *United States* v. *Chase National Bank,* 40 Sup. Ct. 361.

The general rule is that the drawee, by accepting the bill, admits the handwriting of the drawer and cannot recover the amount paid. *Price* v. *Neal,* 3 Burr. 1354; *Bank of United States* v. *Bank of Georgia,* 10 *Wheat.* 333; *Leather Manufacturers' Bank* v. *Morgan,* 117 U. S. 96. The drawee who pays a bill of exchange is estopped to deny the signature of the drawer. *First National Bank* v. *Ricker,* 71 Ill. 439, 22 Am. Rep. 104; *First National Bank* v. *Northwestern National Bank,* 152 Ill. 296, 38 N. E. 739, 26 L. R. A. 289.

But this rule is much restricted and is held to be applicable (1) only in favor of a holder without fault and for a valuable consideration, *Ellis* v. *Ohio Ins. Co.,* 4 Ohio St. 628, 64 Am. Dec. 610; (2) where all the parties are equally innocent, *Stout* v. *Benoist,* 39 Mo. 277, 90 Am. Dec. 466; and (3) where the person to whom the money is paid in no manner contributes to the fraud or mistake of fact under which the payment is made, *First National Bank* v. *First National Bank,* 151 Mass. 280, 24 N. E. 44, 21 Am. St. Rep. 450. Hence the drawee may recover where: (1) the holder was guilty of negligence, *People's Bank* v. *Franklin Bank,* 88 Tenn. 299, 12 S. W. 716, 17 Am. St. Rep. 884, 6 L. R. A. 724; (2) where the holder did not communicate his suspicion that the instrument was probably a forgery, *First National Bank* v. *Ricker, supra; Goddard* v. *The Merchants' Bank,* 4 N. Y. 147; (3) where the payee failed to use proper precautions and took the check without inquiry and indorsed it, *National Bank of North America* v. *Bangs,* 106 Mass. 441, 8 Am. Rep. 349.

Another line of cases hold the test to be whether or not there has been a change of position to the prejudice of the holder resulting from the payment, and if there has been no change, recovery may be had. *First National Bank* v. *Bank of Wyndmere,* 15 N. D. 299, 108 N. W. 546, 10 L. R. A. (N. S.) 49; *McKelroy* v. *Southern Bank,* 14 La. Ann. 458, 74 Am. Dec. 438. But see *Neal* v. *Coburn,* 92 Me. 139, 42 Atl. 348, 69 Am. St. Rep. 495.

But the drawee or bank is not chargeable with knowledge of any other signature on the bill of exchange. *Marine National Bank* v. *National City Bank,* 59 N. Y. 67, 17 Am. Rep. 305; *Hortsman* v. *Henshaw,* 11 How. 177. The drawee bank can charge back the amount credited drawer bank when the indorsement was forged. *Birmingham National Bank* v. *Bradley,* 103 Ala. 109, 15 So. 440, 49 Am. St. Rep. 17; *Alabama National Bank* v. *Rivers,* 116 Ala. 1, 22 So. 580. And money paid can be recovered back in assumpsit. *McCall* v. *Corning,* 3 La. Ann. 409, 48 Am. Dec. 454; *Greenwold* v. *Ford,* 21 S. D. 28, 109 N. W. 516.

The forgery of an indorsement on a forged check will not make a *bona fide holder* liable to the drawee who has paid it. *First National Bank* v. *Marshalltown State Bank,* 107 Iowa 327, 77 N. W. 1045, 44 L. R. A. 131. But the *contra* was held in *Farmers' National Bank* v. *Farmers', etc., Bank,* 159 Ky. 141, 166 S. W. 986, so far as the drawer bank which paid the forged instrument was concerned.

An endorsement by a holder other than the original payee constitutes no warranty or representation that the signature of the drawer is genuine. *Germania Bank* v. *Boutell,* 60 Minn. 189, 62 N. W. 327, 51 Am. St. Rep. 519. See also *Trademen's State Bank* v. *Fort Worth Elevators Co.* (Tex.

App.), 214 S. W. 656. But the weight of authority is *contra*. *People's Bank* v. *Franklin Bank*, 88 Tenn. 299, 12 S. W. 716, 6 L. R. A. 724; *First National Bank* v. *First National Bank*, 4 Ind. App. 355, 30 N. E. 808, 51 Am. St. Rep. 221.

BILLS AND NOTES—HOLDER FOR VALUE—BANK CREDITING PROCEEDS ON ITS BOOKS.—The plaintiff purchased from the drawer before maturity and without notice a bill of exchange drawn on the defendant, and gave the drawer credit on his deposit account. The credit had not been checked out before the bank learned of an existing equity. The question arose of whether the bank was a holder for value. *Held*, it is not. *Alamo National Bank* v. *Dawson Produce Co.* (Okla.), 190 Pac. 393.

In general, a purchaser of commercial paper is a holder for value when he has given for the note his money, goods, or credit at the time of receiving it or has on account of it sustained some loss or incurred some liability. *Kimbro* v. *Lytle*, 10 Yerg. (Tenn.) 417, 31 Am. Dec. 585. Hence, when a bank discounts negotiable paper for a depositor and merely gives him credit on its books for the proceeds, it is not a holder for value, unless some other valuable consideration passes. *Alabama Grocery Co.* v. *First National Bank*, 158 Ala. 143, 48 So. 340, 132 Am. St. Rep. 18; *Drovers' National Bank* v. *Blue*, 110 Mich. 31, 67 N. W. 1105. Here, the relation between the bank and the depositor is only one of debtor and creditor. *Alabama Grocery Co.* v. *First National Bank, supra; New York County National Bank* v. *Massey*, 192 U. S. 138.

However, if the depositor is indebted to the bank in a sum equal to or greater than the proceeds of the negotiable paper, then the bank is a holder for value. *City Deposit Bank* v. *Green*, 130 Iowa 384, 106 N. W. 942. Likewise, the bank holds for value, when the amount credited has been drawn out in checks before the bank has notice of the equity. *Fox* v. *Bank of Kansas City*, 30 Kan. 441, 1 Pac. 789. The status is the same if the account varies from time to time subsequent to the crediting of the amount, but is several times overdrawn before the bank gets notice. *Northfield National Bank* v. *Arndt*, 132 Wis. 383, 112 N. W. 451, 12 L. R. A. (N. S.) 82.

In determining whether a particular sum placed to a customer's bank account has been exhausted, amounts paid on his checks should be charged against the oldest items of deposit or credit. *First National Bank* v. *McNairy*, 122 Minn. 215, 142 N. W. 139, Ann. Cas. 1914D 977; *Fox* v. *Bank of Kansas City, supra*. Hence, when the sum so credited by discounting the negotiable paper has been drawn out many times and replaced by new deposits, the bank is a holder for value, though the balance during the entire period has always been more than the amount of the proceeds. *Dreilling* v. *First National Bank*, 43 Kan. 197, 23 Pac. 94, 19 Am. St. Rep. 126. But see *Union National Bank* v. *Windsor*, 101 Minn. 470, 112 N. W. 999, 118 Am. St. Rep. 641, 11 Ann. Cas. 204 and note; *Albany County Bank* v. *Peoples, etc., Co.*, 86 N. Y. Supp. 773.

When any substantial portion of the proceeds is withdrawn by check, one line of authority holds that the bank is a holder for value. *First National Bank* v. *Persall*, 110 Mich. 333, 125 N. W. 506, 675; *Security Bank* v.